BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

OPENING COMMENTS OF THE CALIFORNIA SMALL LECS

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I. INTRODUCTION.

The California Small LECs hereby file their Opening Comments in response to the Further Notice of Proposed Rulemaking (FNPRM).[1] The rural telephone companies[2] that comprise the California Small LECs are as follows:

Calaveras Telephone Company
Cal-Ore Telephone Co.
Ducor Telephone Company
Foresthill Telephone Co.
Global Valley Networks, Inc.
Happy Valley Telephone Company
Hornitos Telephone Company
Kerman Telephone Co.
Pinnacles Telephone Co.
The Ponderosa Telephone Co.
Sierra Telephone Company, Inc.,
The Siskiyou Telephone Company
Volcano Telephone Company
Winterhaven Telephone Company

The California Small LECs strongly support and concur in the comments filed by the Rural Alliance. The Commission should adopt intercarrier compensation solutions as outlined in the Rural Alliance comments. The California Small LECs support a balanced approach of reasonable carrier charges, reasonable end-user charges and a reasonably sized federal universal service fund. The Rural Alliance proposals best achieve these goals.

The California Small LECs have also had the opportunity to review the comments prepared by the Rural Associations[3] and concur in those comments.

The California Small LECs take this opportunity to amplify and emphasize several issues addressed in the Rural Alliance comments. First, the Commission should conclusively establish

[1] In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, *Further Notice of Proposed Rulemaking*, FCC 05-33 (rel. March 3, 2005).
[2] As that term is used in 47 U.S.C. §153(37).
[3] "Rural Associations" refers to the Colorado Telecommunications Association, the Oregon Telecommunications Association, and the Washington Independent Telephone Association.

compensation for virtual NXX ("VNXX") traffic that parallels the compensation applicable to other interexchange traffic. Second, the Commission should eliminate reliance on the Major Trading Area ("MTA") as the basis for differentiating levels of intercarrier compensation between Commercial Mobile Radio Service ("CMRS") carriers and wireline carriers. Third, the California Small LECs highlight the Rural Alliance's approach that demonstrates embedded costs are appropriately included in a marginal cost analysis and that cost models are inappropriate tools for establishing compensation owed to rural carriers. Finally, the Commission should adopt rules mandating that carriers must identify traffic they originate and create incentives for carriers to comply with such a requirement.

II. THE COMMISSION SHOULD ESTABLISH NATIONAL STANDARDS FOR COMPENSATION ASSOCIATED WITH VNXX TRAFFIC.

Shortly after the adoption of the Telecommunications Act of 1996, many of the California Small LECs began experiencing a situation in which the Local Exchange Routing Guide ("LERG") instructed them to route traffic outside their state commission defined local calling areas, but to rate the call as if it had been delivered to an exchange in which no per-minute charge would be assessed. Such disparate rating and routing permitted a competitive local exchange carrier ("CLEC") to create a virtual network, relying on other carriers' facilities, that would generate tremendous volumes of in-bound traffic to a CLEC customer without the originating caller incurring per-minute charges. The scheme required a CLEC to open NXX codes in a number of exchanges in which it had no facilities to accommodate the preferred rating of the call. A LEC in the exchange where the NXX code was opened would originate and transport the call to the CLEC's point of presence, sometimes outside the LATA. The disparate routing and rating practice was referred to as virtual NXX or VNXX calling.

The artifice of VNXX is particularly appealing to CLECs that serve dial-up Internet service providers ("ISPs"). Through use of network facilities placed by companies like the

California Small LECs, an ISP located in one part of California can create a virtual presence in other parts of the state without investing in facilities in those other parts of the state. This virtual presence permits originating callers to dial the ISP without incurring a per-minute charge. Given the nature of a toll-free dial-up ISP connection, VNXX generates tremendous volumes of minutes of use. Furthermore, CLECs serving the ISPs claim that originating carriers such as the California Small LECs owe the CLECs reciprocal compensation for terminating the VNXX traffic. For small, rural carriers such as the California Small LECs, the bill for VNXX traffic alone has the potential to jeopardize their balance sheets.

In California, the state commission has condoned VNXX without comprehensively addressing intercarrier compensation. Today, CLEC VNXX arrangements have become more sophisticated than they were in 1996. For example, Pac-West Telecomm, Inc. ("Pac-West"), the first carrier in California to identify the VNXX stratagem, now operates three traffic gathering points in California, designated "SuperPOPs." Those SuperPOPs are located in Stockton, Oakland and Los Angeles. To add further details to the example, when a Pac-West VNXX call originates in The Siskiyou Telephone Company's ("Siskiyou's") Somes Bar exchange near the California-Oregon border, that call is routed to the Stockton SuperPOP via facilities used to access the toll network, which is in LATA 9 (Siskiyou's Somes Bar exchange is located in LATA 2), approximately 250 miles away.[4] Accordingly, a Siskiyou subscriber in the very north of California can dial a number, have the call travel all the way to Los Angeles, and generate no access revenues for Siskiyou. The originating rural LEC is also responsible for transporting such calls to Pac-West's nearest presence in the LATA (in the Siskiyou example, the routing instructions identify Chico, approximately 140 miles from Siskiyou's service area) without any compensation to the rural LEC.

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[4] From the Stockton SuperPOP, the routing of the call depends upon the location of Pac-West's customer. For instance, if a dial-up Internet call is intended for Pac-West's customer, ISPWest, the call will be routed from Stockton down to Los Angeles. Under today's intercarrier compensation framework and absent VNXX, a call from Somes Bar to Stockton or to Los Angeles would generate intrastate access charges for Siskiyou.

The VNXX issue is a significant problem that has the potential to cause financial disarray for small, rural carriers. While most of the California Small LECs do not typically measure VNXX traffic originating on their networks, invoices issued by CLECs engaging in VNXX service offerings demonstrate the extreme magnitude of minutes at issue. A recent invoice from Pac-West to Volcano Telephone Company ("Volcano") indicates a monthly total of 2,634,935 VNXX minutes originating on Volcano's network. For a carrier with 11,241 access lines, Volcano is averaging approximately 234.34 minutes of VNXX traffic per access line per month (and that is just for VNXX traffic provisioned by Pac-West). For purposes of comparison, in 2004 Volcano originated almost 21,000,000 minutes of state access usage and 35,300,000 minutes of both interstate and state access minutes. In 2004, Volcano originated 46,550,583 minutes of VNXX traffic, more than double the number of state access minutes and more than all other switched access minutes combined. Other California Small LECs are experiencing similar volumes of VNXX traffic

In 2001, the Commission issued its *Order on Remand*[5] which altered the analysis for determining when reciprocal compensation would apply. By moving away from a focus on local versus non-local traffic for purposes of reciprocal compensation, the Commission opened a door for CLECs to contend that they are entitled to reciprocal compensation for terminating VNXX traffic under the Telecommunications Act of 1996 as construed in the *Order on Remand*. As a result of the D.C. Circuit's remand, however, the Commission's amended rules regarding intercarrier compensation remain in place, but the legal reasoning supporting those rules was overturned. Given the remand and the overturn of the Commission's reasoning, there is no clear mandate under the Communications Act regarding how to treat VNXX traffic in the context of reciprocal compensation obligations. In fact, many issues remain to be resolved, including, most importantly, the scope of "telecommunications" covered by Section 251(b)(5). *See WorldCom,*

[5] *See* In the Matter of Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, *Order on Remand and Report and Order*, FCC 01-131 (released April 27, 2001). The *Order on Remand* was itself remanded by the D.C. Circuit in *Worldcom, Inc. v. F.C.C.*, 288 F.3d 429 (D.C.Cir. 2002).

Inc. v. F.C.C., 288 F.3d 429, 434 (D.C.Cir. 2002). As discussed above, it is the California Small LECs' position that VNXX traffic is not subject to the reciprocal compensation requirements of Section 251(b)(5). The order the Commission adopts in this proceeding should clarify that VNXX traffic is not Section 251(b)(5) traffic.

To preserve rationality in the system of intercarrier compensation, the Commission should find, at a minimum, that VNXX traffic will be subject to a particular intercarrier compensation framework based on the routing points for the traffic specified in the LERG. For example, calls originating in Somes Bar and routed to Stockton or points beyond should be subject to access charge intercarrier compensation regardless of whether those calls have different rating points. Adopting this objective standard will prevent carriers from manipulating intercarrier compensation obligations through their subjective application of rating points that they can control without any reference to the objective routing points that must be accurately specified to ensure calls are delivered in a manner that will allow them to be completed.

III. THE COMMISSION SHOULD ELIMINATE THE INTRAMTA RULE.

In the *Local Competition First Report and Order*, the Commission adopted its intraMTA rule by stating that traffic to or from a CMRS network that originates and terminates within the same Major Trading Area ("MTA") is subject to reciprocal compensation obligations under section 251(b)(5) rather than interstate or intrastate access charges.[6] In the FNPRM, the Commission seeks comments on whether it should eliminate the intraMTA rule given the Commission's goal of moving toward a more unified regime.[7] The intraMTA rule creates artificial distinctions between calls, confusion among carriers and regulators, and results in an

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[6] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, *First Report and Order*, FCC 96-325 (rel. August 8, 1996), ¶ 1036 (*Local Competition First Report and Order*).

[7] *FNPRM* at ¶ 135.

inconsistent application of reciprocal compensation and access charges. The environment created by the intraMTA rule is incompatible with the Commission's goal of moving toward a more unified regime, and therefore, the rule should be eliminated. In the absence of the intraMTA rule, the Commission should adopt the proposal put forward in the Rural Alliance comments for determination of which LEC-CMRS calls are subject to reciprocal compensation and which LEC-CMRS calls are subject to access charges.

In California, the MTA in which most of the California Small LEC service areas are located covers area as far south as Fresno, north to the California-Oregon border and includes a substantial portion of the geographical area of Nevada. The intraMTA rule creates the irrational result that two callers located in Eureka, California, one using a CMRS network, the other using a wireline network, could call the same telephone number in Kerman Telephone Co.'s service area near Fresno, hundreds of miles away, and trigger disparate intercarrier compensation obligations. Under the intraMTA rule, the CMRS call from Eureka to Kerman would be Section 251(b) traffic and generate reciprocal compensation for Kerman. The wireline call would generate terminating access charges for Kerman. Such disparate treatment of traffic creates incentives for carriers to game the applicable intercarrier compensation framework. Given the thriving intermodal competition that exists between CMRS and wireline carriers, any policy concerns in 1996 that may have favored an intraMTA rule for CMRS carriers certainly does not exist today. Accordingly, the Commission should eliminate the intraMTA rule and treat CMRS traffic consistent with the proposals outlined in the Rural Alliance comments.

IV. THE COMMISSION SHOULD RELY ON EMBEDDED COSTS IN ITS COMPENSATION DECISIONS FOR RURAL LECS.

In choosing among the various intercarrier compensation plans, the Commission must decide whether to rely upon embedded costs as the basis for setting compensation. As outlined in the Rural Alliance comments, the embedded cost and a correctly-determined forward-looking cost of reciprocal compensation and access services are not likely to be substantially different. Given the relative similarity of results, the use of embedded costs is not only justifiable but also preferable. For rural companies, the considerably greater administrative expense related to the calculation of forward-looking costs does not merit the use of forward looking cost in lieu of embedded cost.

Furthermore, cost proxy models, which are the primary tools available to calculate forward-looking costs, have proven unreliable in estimating costs for rural companies. The Commission indicated that it would not use such a model to determine support for rural carriers until it had ". . . sufficient validation that forward-looking support mechanisms for rural carriers produce results that are sufficient and predictable."[8] None of the submissions in this docket provide the Commission adequate assurance that a cost proxy model applied to rural carriers can meet the Commission's standard.

The Commission-sponsored Rural Task Force ("RTF") began its work in July of 1998 and issued its final Recommendation to the Joint Board in September of 2000. One of the RTF's major policy recommendations was that "the Synthesis Model not be used for determining the

[8] *See Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Report and Order*, FCC 97-157 (rel. May 8, 1997), ¶ 252.

forward-looking costs of rural carriers."[9] In making this recommendation, the RTF summarized its conclusions from a rigorous study by stating:

> The aggregate results of this study suggest that, when viewed on an individual wire center or individual rural carrier basis, the costs generated by the Synthesis Model are likely to vary widely from reasonable estimates of forward-looking costs. As a result, it is the opinion of the Task Force that the current model is not an appropriate tool for determining forward-looking cost of rural carriers.[10]

In California, the state commission developed its own forward-looking cost proxy model for use in setting universal service support. After weeks of hearings and months of briefing, the resulting decision excluded the California Small LECs from the cost proxy model process.[11]

Cost models do not work for rural carriers, because model inputs do not adequately reflect rural carriers' costs.[12] Model assumptions regarding plant placement for rural carriers vary widely from actual plant in service.[13] Reasons for this discrepancy include inaccurate or non-existent information on rural customer locations and inaccurate data on terrain and soil type. The resource expenditure necessary to refine a forward-looking cost proxy model to produce credible rural results is enormous given the years and resources devoted to developing other models that simply have yielded inaccurate results for rural carriers. Given the documented deficiencies of forward-looking cost proxy models, such models should not be used to determine

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[9] *See* In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service* ("*RTF Recommendation*") (rel. Sept. 29, 2000), p. 4.

[10] *Id.* at p. 18.

[11] *See* D.96-10-066 (October 25, 1996),68 C.P.U.C.2d 524.

[12] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Multi-Association Group Plan for Regulation on Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Fourteenth Report and Order* in CC Docket No. 96-45, and *Report and Order* in CC Docket No. 00-256, ("*RTF Order*")(rel. May 23, 2001) at ¶ 5.

[13] The RTF's analysis of the Synthesis Model found that it generally overestimated the amount of aerial and underground plant, while it underestimated the amount of buried plant. *See RTF White Paper #4* at p. 9.

rural prices for reciprocal compensation and access services without substantial revision. Considering that refinement of an acceptable proxy model would be difficult and considering that embedded cost data is readily available and likely does not differ substantially from forward-looking costs, embedded cost data should be used to set both reciprocal compensation and access rates for rural companies.

V. THE COMMISSION SHOULD REQUIRE CARRIERS TO IDENTIFY THEIR ORIGINATING TRAFFIC.

An enforceable system of intercarrier compensation requires that carriers entitled to compensation can identify the traffic they are terminating and the carrier responsible for such traffic. In today's environment, there is clear evidence that some interexchange carriers are altering call details to suppress the Carrier Identification Code ("CIC"). When this is done, the terminating carrier does not have sufficient information to bill access charges to the interexchange carrier. Rural ILECs must take on faith CMRS representations regarding the nature of traffic terminating on rural carrier networks. A developing situation relates to CLEC business arrangements with VoIP providers which permit interexchange traffic to route over local facilities for termination. In a tradition that began upon adoption of the Telecommunications Act of 1996 and the creation of VNXX services, the newest telecommunications players are building business cases based on avoiding compensation to connecting carriers.

Stripping calling party information makes call tracing impossible. In this proceeding, the Commission should categorically declare that the practice of carriers stripping or altering billing information is unlawful and order all carriers to adhere to existing network billing obligations established by applicable industry billing forums. Furthermore, the Commission should assess penalties on those carriers that engage in such unlawful business practices. The Commission can develop a systematic approach to a unified compensation regime, but creative carriers will find ways to circumvent the system if the rules are not enforced.

VI. CONCLUSION.

The California Small LECs emphatically endorse the positions outlined in the Rural Alliance comments. The California Small LECs also concur in the comments filed by the Rural Associations. As discussed in more detail in these comments, the Commission should adopt an order that conclusively addresses VNXX traffic in a manner that will not lead to arbitrage of the system of intercarrier compensation, eliminate the intraMTA rule, rely on embedded costs instead of forward-looking cost proxy models to establish compensation for rural LECs, and require all originating carriers to identify the traffic they originate.

Respectfully submitted this 23rd day of May, 2005.

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